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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/224,027	12/31/1998	JOSEPH AUGUST GIORDANO	15828-178001	4204
26231	7590	12/13/2007		
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER POINVIL, FRANTZY	
			ART UNIT 3692	PAPER NUMBER
			MAIL DATE 12/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/224,027		GIORDANO ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Frantzy Poinvil		3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 25,27-32,50,51,53-57,68 and 70-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25,27-32,50,51 and 53-57 is/are allowed.
- 6) ☒ Claim(s) 68 and 70-77 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. Applicant's arguments filed 10/10/2007 have been fully considered but they are not persuasive.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 68, 70-74, 76 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Randelman et al (US Patent No. 5,072,380).

As per claims 68 and 77, Randelman et al disclose a system and method for authorizing a transaction at a fuel dispenser. The system and method comprise:

Emitting radio frequency signals from a short-range antenna of a first dispenser such that an electromagnetic field of a predetermined operable range is created only proximate a surface of the first dispenser, and the dispenser can wirelessly communicate with electronic cards within the operable range independent of other dispensers configured to wirelessly communicate with handheld cards (see column 2, line 15 to column 3, line 29 of Randelman et al.);

Determining whether an electronic card having an emitter containing customer identification is within the operable range of the short-range antenna of the first dispenser;

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Wirelessly receiving customer identification data from the handheld card and activating the first dispenser in response to the card passing within the operable range of the short-range antenna;

Identifying credit card information based, at least in part, on the customer identification data;

Verifying with a remote credit card processing site, a customer account associated with the customer identification data prior to permitting the transaction at the activated dispenser and authorizing a charge of the transaction to the verified customer account.

Applicant is directed to column 3, line 34 to column 4, line 59 of Randelman et al..

The only difference between Randelman et al and the claimed invention is that in the claimed invention, a hand-held transponder is claimed whereas in Randelman et al an electronic card is described. As per this difference, the Examiner asserts that handheld transponders are well known in the art. Providing a hand held transponder in the system of Randelman et al would have been obvious to the skilled artisan with the motivation of providing customers with alternate communicating means for communicating with the dispenser.

As per claims 70-74, claims 70-74 are directed to the billing of the customer's account upon a valid authorization of the customer's account which must contain sufficient funds to enable a current transaction (such as dispensing fuel) to take place. As per these limitations, the examiner asserts that performing a card authorization is well known in the art and usually involves a card issuer or bank authorizes a payment for a particular transaction if there exists a sufficient fund in the cardholder's or customer's account. Randelman et al teach cross-checking or validating credit of a customer's account before allowing a transaction to take place. Thus,

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performing the functions of claims 70-74 in Randleman et al would have been obvious to one of ordinary skill in the art to do for payment processing purposes.

As per claim 76, automated teller machines usually cancel a requested transaction in response to at least a violation of a predetermined time limit. This would have deterred undesired transactions or this would have disabled a transaction if the customer is no longer at the premise within a predetermined time limit. Incorporating such a feature in the system of Randelman et al would have been obvious to one of ordinary skill in the art to do at the time of the invention in order to stop a transaction in case the customer is no longer present at the gas station or if no action is taken by the customer, thus freeing the fuel dispenser for other customers.

3. Claim 75 is rejected under 35 U.S.C. 103(a) as being unpatentable over Randelman et al as applied to claim 68 above, and further in view of Van Ness (US Patent No. 4,263,945).

As per claim 75, the teachings of Randelman et al are discussed above. Randelman et al teach sensing the in-range status of a vehicle. Note column 2, lines 61-68 of Randelman et al. Randelman et al do not explicitly teach providing an in-range indication to the customer when the transponder is within the dispenser range. Van Ness discloses that once a vehicle transponder is in sufficient proximity to the dispenser-mounted antennae, the customer is notified that he/she may commence (Van Ness at column 5, lines 7-8 and 45-47). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Van Ness

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into Randelman with the proximity indication in order to inform a customer that he/she has been authorized and may begin fueling the vehicle (Van Ness at column 5, lines 30-47).

*Allowable Subject Matter*

4. Claims 25, 27-32, 50-51, 53-57 are allowable over the art of record.

The prior art taken alone or in combination failed to teach or suggest if a vehicle-mounted transponder is determined to be within the operable range of one of the first electromagnetic fields and if a hand-held transponder is determined to be within the operable range of one of the second electromagnetic fields corresponding to the same fuel dispenser, then overriding the use of the customer identification data from the vehicle-mounted transponder so that the customer identification data from the handheld transponder may be used to process the transaction at the fuel dispenser taken in combination with a fuel dispensing method with radio frequency customer identification capabilities as recited in independent claim 25.

The prior art taken alone or in combination failed to teach or suggest a processing equipment being operable to override the use of the vehicle-mounted transponder for charging the transaction to the customer and instead allowing use of the hand-held transponder for charging the transaction to the customer when both the vehicle-mounted transponder and hand-held transponder are within the respective predetermined long range and short range of the dispensing area taken in combination with a dispensing system with radio frequency customer identification capabilities as recited in independent claim 50.

The prior art taken alone or in combination failed to teach or suggest if both a vehicle-mounted transponder and a handheld transponder are determined to be within the respective

vehicle fueling range and close range before the dispenser is activated, overriding the use at the dispenser of the vehicle-mounted transponder, whereupon following activation of the dispenser the hand-held customer identification data received by the reader is associated with a transaction at the activated dispenser, the transaction at the activated dispenser is permitted and charged to the customer according to the handheld transponder customer identification data taken in combination with a fuel dispensing method as recited in independent claim 55.

The prior art taken alone or in combination failed to teach or suggest determining whether a hand-held transponder containing customer identification data is within a close range of a dispenser, the close range being smaller than the vehicle fueling range of the dispenser and providing an in-range indication to the customer when a vehicle -mounted transponder is within the vehicle fueling range or a hand-held transponder is within the close range taken in combination with a fuel dispensing method as recited in independent claim 56.

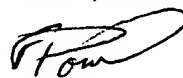
The prior art taken alone or in combination failed to teach or suggest if both a vehicle mounted transponder and a handheld transponder are determined to be within the respective vehicle fueling range and close range, overriding the use at the dispenser of the vehicle mounted transponder, whereupon the handheld customer identification data received by the reader is associated with a transaction at the dispenser, and the transaction is permitted and charged to the customer according to the handheld transponder customer identification data as recited in independent claim 57.

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantzy Poinvil whose telephone number is (571) 272-6797. The examiner can normally be reached on Monday-Thursday from 7:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**Frantzy Poinvil  
Primary Examiner  
Art Unit 3692**

FP  
December 8, 2007